

Senate, March 18, 1998. The Committee on Labor and Public Employees reported through SEN. PRAGUE, 19th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CLARIFICATION OF LIABILITY OF THE SECOND INJURY FUND.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 31-284b of the general statutes is
2 repealed and the following is substituted in lieu
3 thereof:

4 (a) In order to maintain, as nearly as
5 possible, the income of employees who suffer
6 employment-related injuries, any employer who
7 provides accident and health insurance or life
8 insurance coverage for any employee or makes
9 payments or contributions at the regular hourly or
10 weekly rate for full-time employees to an employee
11 welfare plan, shall provide to the employee
12 equivalent insurance coverage or welfare plan
13 payments or contributions while the employee is
14 eligible to receive or is receiving compensation
15 pursuant to this chapter, or while the employee is
16 receiving wages under a provision for sick leave
17 payments for time lost due to an
18 employment-related injury. As used in this
19 section, "income" means all forms of remuneration
20 to an individual from his employment, including
21 wages, accident and health insurance coverage,
22 life insurance coverage and employee welfare plan

23 contributions and "employee welfare plan" means
24 any plan established or maintained for employees
25 or their families or dependents, or for both, for
26 medical, surgical or hospital care benefits.

27 (b) An employer may provide such equivalent
28 accident and health or life insurance coverage or
29 welfare plan payments or contributions by: (1)
30 Insuring his full liability under this section in
31 any stock or mutual companies or associations that
32 are or may be authorized to take such risks in
33 this state; (2) creating an injured employee's
34 plan as an extension of any existing plan for
35 working employees; (3) self-insurance; or (4) by
36 any combination of the methods provided in
37 subdivisions (1) to (3), inclusive, of this
38 subsection that he may choose.

39 (c) In the case of an employee welfare plan,
40 an employer may provide equivalent protection by
41 making payments or contributions for such hours of
42 contributions established by the trustees of the
43 employee welfare plan as necessary to maintain
44 continuation of such insurance coverage when the
45 amount is less than the amount of regular hourly
46 or weekly contributions for full-time employees.

47 (d) (1) FOR PURPOSES OF THIS SUBSECTION,
48 "INDIVIDUAL" MEANS AN INDIVIDUAL EMPLOYED BY A
49 PUBLIC EMPLOYER WHOSE TOTAL INCAPACITY IS THE
50 RESULT OF AN INJURY SUSTAINED PRIOR TO JULY 1,
51 1995.

52 (2) In any case where compensation payments
53 to an individual for total incapacity under the
54 provisions of section 31-307 continue for more
55 than one hundred four weeks, the cost of accident
56 and health insurance or life insurance coverage
57 after the one-hundred-fourth week shall be paid
58 out of the Second Injury Fund in accordance with
59 the provisions of [section 31-349] SUBDIVISION (3)
60 OF THIS SUBSECTION.

61 (3) THE COST OF ACCIDENT AND HEALTH INSURANCE
62 OR LIFE INSURANCE COVERAGE REQUIRED UNDER THIS
63 SECTION SHALL BE PAID TO A PUBLIC EMPLOYER AS
64 REIMBURSEMENT OUT OF THE SECOND INJURY FUND AFTER
65 THE ONE-HUNDRED-FOURTH WEEK. AS A CONDITION
66 PRECEDENT TO THE LIABILITY OF THE SECOND INJURY
67 FUND, THE PUBLIC EMPLOYER SHALL, NO EARLIER THAN
68 SIXTY DAYS BEFORE THE EXPIRATION OF THE
69 ONE-HUNDRED-FOURTH WEEK PERIOD, NOTIFY THE
70 CUSTODIAN OF THE SECOND INJURY FUND THAT SUCH

71 PAYMENT IS REQUIRED. THE PUBLIC EMPLOYER SHALL
72 ALSO FURNISH TO THE CUSTODIAN ALL INFORMATION
73 SUPPORTING THE CLAIM AS TO THE LIABILITY OF THE
74 SECOND INJURY FUND AND SHALL MAKE AVAILABLE TO THE
75 CUSTODIAN ALL MEDICAL REPORTS AS THE CUSTODIAN
76 SHALL REQUEST. THE FUND'S LIABILITY FOR THE COSTS
77 OF THE COVERAGE SHALL BEGIN SIXTY DAYS AFTER THE
78 DATE THE CUSTODIAN IS NOTIFIED. FAILURE ON THE
79 PART OF THE PUBLIC EMPLOYER TO COMPLY DOES NOT
80 RELIEVE THE PUBLIC EMPLOYER OF ITS OBLIGATION TO
81 CONTINUE FURNISHING COMPENSATION UNDER THE
82 PROVISIONS OF THIS SECTION.

83 (e) Accident and health insurance coverage
84 may include, but shall not be limited to, coverage
85 provided by insurance or directly by the employer
86 for the following health care services: Medical,
87 surgical, dental, nursing and hospital care and
88 treatment, drugs, diagnosis or treatment of mental
89 conditions or alcoholism, and pregnancy and child
90 care.

91 LAB COMMITTEE VOTE: YEA 14 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 277

STATE IMPACT Cost (Second Injury Fund), see explanation below

MUNICIPAL IMPACT Cost Saving, Cost, see explanation below

STATE AGENCY(S) Office of the State Treasurer

EXPLANATION OF ESTIMATES:

STATE IMPACT: The bill will result in a cost to the Second Injury Fund (SIF) of approximately \$200,000 per year. The fiscal impact is the result of the SIF reimbursing public employers for the cost of continuing after 104 weeks, to provide accident and health insurance or life insurance coverage to employees totally disabled by on-the-job injury prior to 7/1/95. The figure is based on SIF experience prior to October 1995.

The SIF assessments on public and private employers are levied by one of two methods: (1) for insured employers, SIF assessments are based on the employer's insurance premium, and (2) for self insured employers, SIF assessments are based on the losses experienced by the employer. Self-insured municipalities pay SIF assessments based on their losses, and insured municipalities pay based on their premiums. Any increase in SIF liabilities causes an increase in assessments on employers. Thus, the \$200,000 SIF cost in this bill will increase total assessments by \$200,000. For the current year, the total amount assessed by the SIF is \$90 million. (This does not include the effect of this bill.)

MUNICIPAL IMPACT: Since municipalities are required by law to provide continuing coverage for municipal employees injured on the job, all municipalities in total will save approximately \$200,000.

There will also be a cost to municipalities for their share of the additional \$200,000 assessment that will be paid by all employers into the SIF.

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OLR BILL ANALYSIS

sSB 277

AN ACT CONCERNING CLARIFICATION OF LIABILITY OF THE SECOND INJURY FUND

SUMMARY: This bill makes it clear that the Second Injury Fund is liable after 104 weeks to reimburse public employers for the cost of continuing to provide accident and health insurance or life insurance coverage to employees totally disabled by on-the-job injury prior to July 1, 1995.

A 1992 U.S. Supreme Court ruling invalidated state laws mandating such reimbursement to private employers because they were preempted by the Employee Retirement Insurance Security Act (ERISA). The ruling did not affect public employers. In 1995 the General Assembly eliminated the procedure employers must follow to establish the fund's liability for reimbursement of such insurance costs. The bill reinstates the procedure for public employers.

EFFECTIVE DATE: OCTOBER 1, 1998

FURTHER EXPLANATION

Procedure for Establishing Fund Liability

The bill specifies that to qualify for reimbursement, a public employer must notify the fund no more than 60 days before the 104th week, including information supporting the claim and any medical reports the fund may request. The fund's liability to reimburse begins 60 days after notification. Failure to follow this

procedure does not relieve the public employer of its obligation to continue providing insurance coverage to the employee.

BACKGROUND

Second Injury Fund

The fund is a workers' compensation fund financed by private and public Connecticut employers and operated by the state treasurer. Among other things, the fund pays or contributes to workers' compensation benefits for workers with preexisting disabilities who are reinjured, whose employers are uninsured, or who worked more than one job when injured.

Connecticut Attorney General's Ruling

In a 1993 opinion to the state treasurer, the attorney general held that the U.S. Supreme Court decision *District of Columbia v. Greater Washington Board of Trade* invalidates requirements under CGS § 31-284b(d) because of the ERISA preemption. He also pointed out that the decision does not relieve public employers, whose benefit plans are exempt from ERISA, of liability for insurance benefit costs. He stated that the fund remains obligated to reimburse because its liability derives from the public employer's liability.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 14 Nay 0